87-608 (1)

NO. _____

Supreme Court, U.S.
FILED
AUG 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Helmer T. PEDERSON,

Appellant

v.

Sylvan SHULMAN,

Appellee

APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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ATTORNEY FOR APPELLANT

August 26, 1987

30 pp

QUESTIONS PRESENTED

The ultimate question is whether or not the recharacterization by the Federal Court of appellant's residence as community property, thereby causing the entire property to become subject to execution by husband's judgment creditor to the exclusion of the wife's joint tenancy property rights, violated appellant's United States Constitution, Fifth and Fourteenth Amendment, and California Constitution, Article I, Section 7, rights to due process of law and equal protection of the laws.

Subsidiary questions:

1. Is it proper for a Federal Court to expand a California family law statute, which creates a presumption regarding the character of property in family law matters only, to a non-family law matter involving a third party creditor, particularly where the debt is not a community debt.

2. Are the Federal Courts bound by the

law and rulings of a party's domiciliary state in determining property rights as between the party and third party creditors?

LIST OF PARTIES

SPACETIME SYSTEMS CORPORATION, EDMOND J. E'CHAVARRIE, ALLEN H. K. CHUN, and HARRY STROMER were named defendants in addition to HELMER T. PEDERSON, the appellant herein. Judgment was rendered against all defendants except HARRY STROMER. So far as is known, plaintiff has sought recovery from PEDERSON only.

Appellant's wife, MARJORIE, was *not named* as a party and has *not appeared* in any proceeding involving this matter.

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The statutory provision that confers jurisdiction of this Appeal on this Court is 28 U.S.C. §1254

UNITED STATES CONSTITUTION AMENDMENTS
FIFTH AMENDMENT
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Article 1, Section 7

THE STATEMENT OF THE CASE

INTRODUCTION

Appellant appeals from the final order and judgment of the United States Court of Appeals for the Ninth Circuit entered on May 7, 1987 denying appellant's petition for rehearing, and its judgment entered on April 9, 1987, affirming the judgment of the United States District Court, Southern District of California holding appellant's residence property to be community property apparently pursuant to California Civil Code, Division 4, Part 5 ("The Family Law Act"), Section 4800.1 ("Legislative findings and declarations; property acquired during

marriage in joint form presumed community property; division of property upon dissolution or legal separation") and therefore subject to execution to satisfy a judgment against the husband only, where the subject property was acquired by appellant before marriage as his sole and separate property in fee simple and four years after marriage, and some twenty years prior to this judgment, was transferred by appellant to himself and his wife as joint tenants.

OPINIONS BELOW

The Order for Sale of Dwelling is printed in Appendix A hereto. The opinion of the United States Court of Appeals for the Ninth Circuit is printed in Appendix B hereto. The Order (denying appellant's petition for rehearing) is printed in Appendix C hereto. The Notice of Appeal is printed in Appendix D hereto.

JURISDICTION

The original law suit was filed in The United States District Court, Central District of California (Case Number: CV 81-6466-RMT(Mx)). The United States District Court, Southern District of California, ordered the sale of Appellant's dwelling on December 13, 1985. (Appendix A). The United States Court of Appeals for the Ninth Circuit affirmed the District Court's order on April 9, 1987. (Appendix B). The judgment order denying appellant's petition for rehearing was entered on May 7, 1987. (Appendix C). A timely notice of appeal to this Court was filed on May 22, 1987. (Appendix D). This appeal is being docketed in this Court within ninety days from the denial of the rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS

No person shall be deprived of property without due process of law (U.S.Const., 5th and 14th Amend.), nor shall any State deny to any person within its jurisdiction the equal protection of the laws (U.S.Const., 14th Amend.) A person may not be deprived of property without due process of law or denied equal protection of the laws (Cal.Const., Art. 1, §§ 1, 7).

STATEMENT OF THE CASE

Judgment debtor, HELMER PEDERSON, appealed from an order of sale of dwelling on November 6, 1985 in the United States District Court, Southern District of California. Despite title of the residential property indicating a joint tenancy between PEDERSON and his wife, the Court found the property to be community and therefore subject to execution to satisfy the judgment against PEDERSON.

Appellant maintains the district court erred in finding the property to be community, because the judgment creditor failed to rebut the presumption that the property was held in joint tenancy, as there was no showing of a common understanding or agreement to change the character, as required. Clark v. Carter (1978) 70 C.R. 923, 265 C.A.2d 291.

1. **Is it proper for a Federal Court to expand a California family law statute, which creates a presumption regarding the character of property in family law matters only, to a non-family law matter involving a third party creditor, particularly where the debt is not a community debt.**

Schindler vs. Schindler (1954) 272 P2d 566, 126 C.A.2d 597 has clearly stated that if a deed is taken in joint tenancy, this establishes a prima facie case that the property is, indeed, held in joint tenancy. All decisions researched which deal with the

applicable code sections and presumptions of community property pertained only to *dissolution, legal separation or probate proceedings,* such as Marriage of Lucas (1980) 27 C.3d 808, 166 C.R. 853, 614 P2d 285, and are therefore inapplicable.

Despite the fact that this case involves a creditor's attempt to satisfy a judgment, appellees' supporting statute applies to dissolution proceedings only and specifically involves property acquired during marriage; both criteria are inapplicable to the case at bar.

> "For purposes of property upon *dissolution of marriage or legal separation,* property acquired by parties *during marriage* in joint tenancy form is presumed to be community property."
>
> California Civil Code, Section 4800.1(b)

California case law indicates *the burden of proof is heavier on a third party than between spouses:* In Marriage of Millsberg (1979) 150 Cal Rptr 142, the court

spoke of a

> "...long recognized rule that the rights and obligations which spouses have with respect to third parties are not necessarily determinative of their property rights *INTER SE*".

In distinguishing, the court said,

> "It should be noted here that we are dealing strictly with the situation as between the parties to a marriage and *are not dealing with the characteristics of the property as against the claims of judgment creditors or other third persons as was the case in Hulse v. Lawson, 212 Cal.614, 299 P525*". [emphasis added].

While the cases do not label the joint tenancy presumption as CONCLUSIVE to third parties, the burden clearly shifts to the third party to...

> "...rebut by a preponderance of the evidence by establishing a common understanding of the owners or an agreement that the character was to be other than joint tenancy".
>
> Hansford v. Lasser (1976) 53 Cal App3d 374, 125 Cal Rptr 804.

The district court did *not* follow California case law and abused its discretion by not requiring Appellees to

satisfy the requisite burden of proof. As a consequence, a dangerous precedent, infringing upon the due process and property rights of individuals, has been established by allowing third party creditors to challenge the joint tenancy presumption of property with a mere reasonable inference or less, as occurred in the case at bar.

Even survival actions must overcome a burden of persuasion to which the Appellees were not subject:

> "For other purposes, such as survivorship, existing law that a joint tenancy deed creates a presumption of joint tenancy that can *only be rebutted by evidence of an agreement that the property is held in some other for of ownership still appears to be applicable*". [emphasis added]
> Clark v Carter (1968) 265 Cal App 2d 291, 70 Cal Rptr 923.

2. **Are the Federal Courts bound by the law and rulings of a party's domiciliary state in determining property rights as between the party and third party creditors?**

The district court was under an

obligation to follow California law.

> "The federal law is clear that in construing state statute, federal courts must defer to the highest court of the state as best arbiter of state law."
>
> Donahue v. Rhode Island Dept of Mental Health, Retardation and Hospitals By and Through Romeo, 632 F. Supp.1456 (1986).

The district court erred in failing to hold the appellees to the same California standard of proof as any other third party creditor in the area of joint tenancy, for it is well established that:

> "Federal court lacks jurisdiction to authoritatively construe state legislation; it cannot sit as "super legislature" and impose its own narrowing construction on state statute".
>
> Nash v. State of Texas, 632 F. Supp.951 (1986).

The district court failed to follow the decisions of the state's courts in interpreting the state law. This resulted in a taking of Appellant's entire residential property, without proper due process or compensation; a taking of property which was purchased by Appellant

prior to his marriage over 30 years ago.

> *"If a judgment debtor's interest is in a joint tenancy, the interest of the debtor, but not the dwelling itself, may be sold at execution."*
>
> California Code of Civil Procedure Section 704.820(a); Witkin on Civil Procedure, Third Edition (1985) Volume Eight, page 214.

SUBSTANTIALITY OF FEDERAL QUESTION

The questions presented on this appeal have never been passed upon by this Court. There have been many dissolution proceedings throughout the country characterizing property of the parties in settlement of their rights. Nowhere, except in the case at bar, did we find a case involving *creditor's rights* using *family law* statutes, cases and standards to characterize property. Appellee has repeatedly cited the Hansford case to support a recharacterization of the propery as community. Hansford is dissimilar, as the husband **fraudulently** conveyed his 1/2 of the

property to his wife AFTER an abstract of judgment was recorded; the Court found the property was community based on the parties' actions and intent to defraud, though admitting there were reasonable inferences to the contrary.

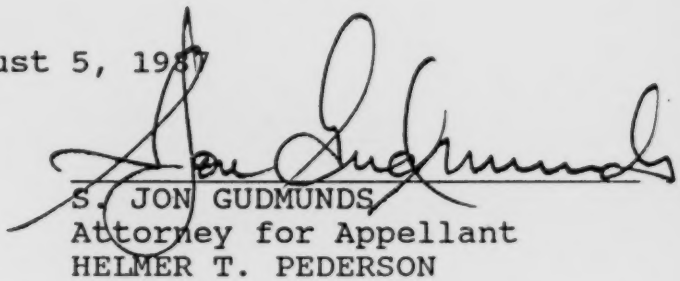
There was no such fraudulent transfer in the case at bar, yet the District Court improperly allowed the burden of proof to shift to the property owner which resulted in a misapplication of a state's laws, all of which is repugnant to the Constitutions of the United States and the State of California.

> "The burden is on the opponent to rebut the presumption by a *preponderance of the evidence*; ... there must be established a 'common understanding of the owners or an agreement that the character was to be other than joint tenancy.'"
>
> Hansford v. Lassar (1976) 53 C.A. 3d 374, 125 C.R. 804.

CONCLUSION

Probable jurisdiction should be noted. The questions presented by this appeal are substantial and the Court should reverse the decision below in order to correct the erroneous decision of the United States District Court, Southern District of California.

DATED: August 5, 1987



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APPENDIX

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. 85-0042 (Misc.)

ORDER FOR SALE OF DWELLING
CCP §704.780(b)

SYLVAN SHULMAN,
Judgment Creditor,
vs.

SPACETIME SYSTEMS CORPORATION,
an Arizona corporation, et al.,
Judgment Debtors.

THOMPSON, District Judge.

The application of judgment creditor Sylvan Shulman for an order for the sale of that certain dwelling located at 241 North Pacific Avenue, Solana Beach, California, came on regularly for hearing pursuant to an order to show cause on October 28, 1985, in the courtroom of the Honorable Gordon Thompson, Jr., United States District Judge. The judgment creditor, Sylvan Shulman, appeared through his attorneys of record, Styn & Garland, by Jeffrey N. Garland, Esq.

Judgment debtor Helmer T. Pederson appeared through his attorney, S. Jon Gudmunds, Esq.

The court having received and reviewed the application, memorandum of points and authorities, declarations ad depositions of Helmer and Marjorie Pederson, submitted by all parties, and having heard the argument of counsel, and being fully advised in the premises, now, therefore, makes the following findings:

1. The dwelling commonly known as 241 North Pacific Avenue, Solana Beach, California, (hereinafter referred to as the "subject dwelling") is owned by Helmer T. Pederson and Marjorie M. Pederson, husband and wife, as joint tenants.

2. The subject dwelling constitutes community property of Helmer T. Pederson and Marjorie M. Pederson and is subject to execution to satisfy the judgment against the judgment debtor.

3. There is no homestead declaration

on file as to the dwelling.

4. Pursuant to Code of Civil Procedure §704.730, Helmer T. Pederson and Marjorie M. Pederson are entitled to a homestead exemption in the total amount of $55,000.00.

5. There currently exists a first deed of trust against the subject dwelling in favor of the Central Federal Savings & Loan Association of San Diego. The unpaid balance of the note which the deed of trust secures is $10,209.25 as of October 10, 1985. Daily interest is accruing on said balance at the rate of $1.77 per day from October 10, 1985.

6. The fair market value of the subject dwelling is $352,000.00.

Based on the foregoing findings, now therefore,

IT IS HEREBY ORDERED that the application of the judgment creditor is GRANTED, and the United States Marshal is directed pursuant to Code of Civil Procedure

§701.510 et seq., to sell the dwelling whole legal description is: "Lot 14 in Block 23 of Solana Beach, in the County of San Diego, State of California, according to Map thereof No. 1749, filed in the Office of the County Recorder of San Diego County, March 5, 1923. Excepting therefrom any portion thereof heretofore or now lying below the mean high tide line of the Pacific Ocean," and commonly known as 241 North Pacific Avenue, Solana Beach, California, in accordance with Code of Civil Procedure Section 701.510, et seq. all other legal requirements.

IT IS FURTHER ORDERED that the amount of the proceeds of the sale is to be distributed in the following order:

1. To Central Federal Savings & Loan Association of 3888 Calle Fortunada, San Diego, California 92123, the unpaid balance on the note secured by a first deed of trust on the subject dwelling, in the principal

amount of $10,209.25 as of October 10, 1985, together with any and all interest which accrues from October 10, 1985 to the time of sale less any payments of principal and/or interest which may be made by the time of the sale.

2. To Helmer T. Pederson and Marjorie M. Pederson the sum of $55,000.00.

3. To the levying officer for the reimbursement of the levying officer's costs for which an advance is not made.

4. To the judgment creditor, Sylvan Shulman, to satisfy the following:

(a) First, costs and interest accruing after the issuance of the writ pursuant to which the sale is conducted;

(b) Second, the amount due on the judgment with costs and interest, as entered on the writ.

5. To the judgment debtor, the amount remaining, if any.

IT IS FURTHER ORDERED that the actual

sale of the subject dwelling shall not take place prior to December 1, 1985; provided, however, that the judgment creditor and/or the levying officer may take any actions permitted by law to prepare for and/or notice the sale forthwith.

The clerk is directed to enter this order, and transmit a certified copy of the order to the levying order and to the Clerk of the United States District Court, Central District of California.

DATED: 11-4-85

/s/ Gordon Thompson Jr.

GORDON THOMPSON, JR.
Judge of the United State
District Court, Southern
District of California

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 85-6508
D.C. Misc. No. 85-0042-GT

MEMORANDUM*

SYLVAN SHULMAN,
Judgment-Creditor/Appellee,
v.

SPACETIME SYSTEMS CORP.,
Judgment-Debtor, and

HELMER T. PEDERSON,
Judgment-Debtor/Appellant.

SNEED, ALARCON and KOZINSKI, Circuit Judges
Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District Justice,
Presiding

Argued and Submitted
April 6, 1987 -- Pasadena, California

The appeal is not moot. Burbank Anti-Noise Group v. Goldschmidt, 623 F.2d 115, 116 (9th Cir. 1980), cert. denied, 450 U.S. 965 (1981). The district court's finding that the Pedersons intended their home to be held as community property was supported by substantial evidence in the record. The

home's sale was therefore proper. Cal. Code Civ. Proc. § 695.020(b) (West Supp. 1987).

Affirmed.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 85-6508
D.C. Misc. No. 85-0042-GT

ORDER

SYLVAN SHULMAN,
Plaintiff-Appellee,
v.

SPACETIME SYSTEMS CORP.,
Defendants-Appellees.

Before: SNEED, ALARCON and KOZINSKI, Circuit Judges.

Appellant's petition for rehearing is denied.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 85-6508
D.C. Misc. No. 85-0042-GT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

SYLVAN SHULMAN,
Judgment-Creditor/Appellee,
v.

SPACETIME SYSTEMS CORP.,
Judgment-Debtor, and

HELMER T. PEDERSON,
Judgment-Debtor/Appellant.

NOTICE IS HEREBY GIVEN that HELMER T. PEDERSON, Judgment-Debtor/Appellant, hereby appeals to the Supreme Court of the United States from the final judgment of this court entered on April 9, 1987 (a rehearing of which was denied by this court on May 7, 1987).

This appeal is taken pursuant to 28 U.S.C. § 1257(2) of Title 28 of the United States Code.

DATED: May 20, 1987

/s/ S. Jon Gudmunds

S. JON GUDMUNDS
Attorney for HELMER T. PEDERSON

California Civil Code §4800.1(b):

For the purpose of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following:

(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community.

(2) Proof that the parties have made a written agreement that the property is separate property.

California Code of Civil Procedure §704.820(a):

If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At the execution sale of a dwelling, the interest of the judgment debtor in the dwelling, and not the dwelling, shall be sold.

Amendment V of the UNITED STATES CONSTITUTION:

No person shall be held to answer for a capital, or otherwise in famous rime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV of the UNITED STATES CONSTITUTION:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of the laws; nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA CONSTITUTION:

Article I, Section 1: All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Article I, Section 7: The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases by the consent of both parties, expressed in open court by the defendant and his counsel, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanors, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.